

3852-5/5

An Answer to Mr. Hewetson's Petition, State of his Case, and Print, pretending to the Honorable House of Commons, a Title unto Rathlyn and Lisduff, part of Lord Lanesboro's Estate.

THAT the late Lord Lanesboro purchast of Thomas Dutton, Rathlyn and Lisduff in 1649, and about 1650 follow'd King Charles 2d. into Banishment; upon which the said Lands were seiz'd and sequestred, as his being a Delinquent.

That at the Restauration, finding Sir Jo. Norton got into possession by a Deed dated in 1631. from Sir Thomas Dutton; Sir G. Lane did purchase in that Title also, and took off several other incumbrances: so that Estate cost him twenty years purchase.

But as to Mr. Hewetson, several pregnant circumstances do demonstrate, that there can be no such Deed of Intail as he pretends. For,

1st. The Inquisition he produces, has found only Rathlyn, half the Estate to be in Sir Thomas Dutton.

2^{dly}. Sir Thomas Dutton, by his last Will, which stands on Record, and never disputed, gives it for a reason why he incumbered Rathlyn, because he had provided for his Eldest Son, in letting him pass Patent to him and his Heirs of Lisduff the other half, before the 5th of March 1633. So that Sir Thomas Dutton could not Intail Lisduff, as is pretended in 1634.

But if there were such an Intail, yet Sir G. Lane's particular Clauses in the Acts of Settlement barr it, pages of the Statute-book, 557, 567, and 568. For,

1st. Mr. Hewetson, as being any way an Heir to Thomas Dutton, is by the indefinite words of the Act, [the Heirs] barr'd, as to any right of his; and does not come within the general saving.

2^{dly}. Mr. Hewetson, and those under whom he claims, not being adjudged innocent according to the qualifications of that Act; are barr'd.

3^{dly}. The Deed dated 1631. from Sir Thomas Dutton to Norton, is confirm'd unto Sir G. Lane and his Heirs, by the construction of the said Clause; and that Deed appears to be dated some years before the pretended Intail dated the 1st of April 1634.

But suppose this were the Case of any body that holds under the Acts of Settlement, without any such particular Clause, and had lost (as for example in this War) all Writings whereby to make out their Title, besides the Certificate and Letters Patents.

Yet its presum'd such a saving would not be allow'd, if it be consider'd.

1st. All persons, tho innocent Protestants, whose Lands were seiz'd and sequestred, are barr'd in the Acts, by non-claim in due time; and by not being adjudged innocent, according to the qualifications of the Acts. As is Mr. Hewetson's Case.

2^{dly}. It would be of most fatal consequence to the British Interest, if all the proceedings in the late Court of Claims, on which so many Certificates and Letters Patents were granted, shou'd be now arraign'd. As Mr. Hewetson does in this Case.

The present Lord Lanesboro being also a Purchaser by his Marriage Settlement in 1676. of those Lands, he and his then Council intirely relying on the security of the said Acts: Since which a descent cast, and Recovery had, quiet Possession ever since, a Revolution and War intervening; whereby the proofs his Father produced at the Court of Claims, may beremoved: so that he must still depend upon the security of the said Acts.

It's true, about a year or more there was an Ejectment brought by one Mrs. Jane Burdet alias Hewetson, alias Watson, that Mr. Rotton on Lord Lanesboro's behalf, took upon him the defence of all the Lands in her Declaration, except such Acres as were in Lord Barnwell's possession; as to which

Acres of Lord Barnwell's, she had a Title upon default: On which Mr. Hewetson wou'd now ground his pretence of having recovered part of the Land, tho they never since took out Execution; nor if they had, could it affect Lord Lanesboro, nor was there any Suit renew'd.

'Tis an extraordinary insinuation, that one of Tho. Dutton's Deeds bears date 4 years after he died, which Mr. Hewetson himself avers he did in 1660; but the Deed produced in the Court of Claims, was from Thomas Dutton dated in 1649. and Mr. Hewetson seems to set forth the same in one State of his Case.

But Mr. Hewetson also in his Petition, and State of his Case at first, desir'd a Clause, the better to enable him to recover the said Lands; tho now he only demands a saving, not to be worse than he now is.

And if a saving shou'd be granted Mr. Hewetson, another saving cannot in reason be deny'd Lord Lanesboro also; that he shall not any way be injur'd by Mr. Hewetson's said saving. So there may be savings *ad infinitum*.

And if Mr. Hewetson, who makes out no manner of Title, shall have a saving against so many expresse clauses Lord Lanesboro has to barr him. Can there be any reason assign'd why every man, Papist or Protestant, that thinks himself any way agrieved by the Acts of Settlement in the general clauses, should not have savings as well as Mr. Hewetson. (when many innocent Protestants lost Estates they had real Titles to by non-claim in due time) which instead of quieting and settling possessions, as is intended by this Bill; would at this, or at another Session, when this may be made a president be the cause of disturbing possessions; wholly tending to the subversion of the former Acts.

Let every one consider, were it his own case; and if this inconvenience be not to be allow'd upon every clause, why shou'd Lord Lanesboro be singled out to be debarr'd of his right in a general Confirming Act. When manifestly a fair Purchaser come in under the security of the Acts of Settlement.

Wherefore 'tis hoped this Petition of Mr. Hewetson's, which has already too long put an obstruction to the general good intended, will be dismiss'd, and not still hang an umbrage over the Acts: When also another Petition to the like effect has already followed it. And to suspend determining this matter as it is an impediment to Lord Lanesboro's setting his said Estate, now lying waste; so the shock threatned to the Acts of Settlement thro' him, is at this time a considerable suspension to the effects of that Settlement thro' the Kingdom.

Whereas the late House of Commons threw out a Bill come down from the Government to them, for confirming the Acts of Settlements, principally because there was one saving in it.

As to the payment of Quit-Rent, all Protestants Estates that were seized and sequestred, are exempted, page of the Stat. Book, 819.

And tho it be groundless, yet its a bold unwarrantable assertion of Mr. Hewetson either that lands which pass by Certificates and Letters Patents were not before seized and sequestred, or that the Court of Claims and Parliament could be wrought upon by any one to pass such favourable clauses without previous examination.

But the Act it self sets forth that Sir G. Lane was in possession in 1650. page 567. and the Courts of Law never allow an averment against the Certificates which would render all mens Estates on those Acts precarious.

But he flatly denies the authority of that Parliament when he avers that Estate never any way fell under the disposition of those Acts.